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Attorneys for Defendant
FLURRY, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re iPhone Application Litigation

Case No. 11-MD-02250-LHK

CLASS ACTION

**DECLARATION OF S. ASHLIE BERINGER
IN SUPPORT OF MOBILE INDUSTRY
DEFENDANTS' MOTION TO DISMISS
FIRST AMENDED, CONSOLIDATED
CLASS ACTION COMPLAINT**

1 I, S. Ashlie Beringer, declare as follows:

2 1. I am an attorney at law admitted to practice before all of the Courts of the State of
3 California and this Court. I am a partner at Gibson, Dunn and Crutcher LLP and counsel for
4 Defendant Flurry, Inc. ("Flurry") in this litigation. I make this declaration upon personal knowledge
5 and could and would competently testify to the matters below if called to do so.

6 2. Attached hereto as Exhibit A is a true and correct copy of Apple's iTunes Terms and
7 Conditions, which includes Apple's App Store Terms and Conditions and Apple's Privacy Policy,
8 and is available at <http://www.apple.com/legal/itunes/us/terms.html>.

9 3. Attached hereto as Exhibit B is a true and correct copy of Dictionary.com's Privacy
10 Policy dated May 18, 2010.

11 4. Attached hereto as Exhibit C is a true and correct copy of relevant excerpts of the
12 official transcript of this Court's September 8, 2011 hearing on Defendants' Motion to Dismiss
13 Plaintiffs' First Consolidated Complaint.

14 5. Attached hereto as Exhibit D is a true and correct copy of a September 19, 2011 Order
15 issued by Judge Otis D. Wright II in *Robins v. Spokeo*, Case No. CV-10-05306 ODW (C.D. Cal.).

16 6. I declare under penalty of perjury under the laws of the United States of America that
17 the foregoing is true and correct and that this declaration was executed on January 10, 2012, at Palo
18 Alto, California.

19
20 /s/ S. Ashlie Beringer
21 S. ASHLIE BERINGER
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Exhibit A



Store

Mac

iPod

iPhone

iPad

iTunes

Support



TERMS AND CONDITIONS

- [A. ITUNES STORE, MAC APP STORE, APP STORE, AND IBOOKSTORE TERMS OF SALE](#)
- [B. ITUNES STORE TERMS AND CONDITIONS](#)
- [C. MAC APP STORE, APP STORE AND IBOOKSTORE TERMS AND CONDITIONS](#)
- [D. PRIVACY POLICY](#)

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Your total price will include the price of the product plus any applicable sales tax; such sales tax is based on the bill-to address and the sales tax rate in effect at the time you download the product. We will charge tax only in states where digital goods are taxable.

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THE ITUNES STORE SERVICE

Apple is the provider of the iTunes Service, which permits you to purchase or rent digital content ("iTunes Products") for end user use only under the terms and conditions set forth in this Agreement.

REQUIREMENTS FOR USE OF THE ITUNES SERVICE

This iTunes Service is available for individuals aged 13 years or older. If you are 13 or older but under the age of 18, you should review this Agreement with your parent or guardian to make sure that you and your parent or guardian understand it.

The iTunes Service is available to you only in the United States, its territories, and possessions. You agree not to use or attempt to use the iTunes Service from outside these locations. Apple may use technologies to verify your compliance.

Use of the iTunes Service requires compatible devices, Internet access, and certain software (fees may apply); may require periodic updates; and may be affected by the performance of these factors. High-speed Internet access is strongly recommended for regular use and is required for video. The latest version of required software is recommended to access the iTunes Service and may be required for certain transactions or features and to download iTunes Products previously purchased from the iTunes Service. You agree that meeting these requirements, which may change from time to time, is your responsibility. The iTunes Service is not part of any other product or offering, and no purchase or obtaining of any other product shall be construed to represent or guarantee you access to the iTunes Service.

YOUR ACCOUNT

As a registered user of the iTunes Service, you may establish an account ("Account"). Don't reveal your Account information to anyone else. You are solely responsible for maintaining the confidentiality and security of your Account and for all activities that occur on or through your Account, and you agree to immediately notify Apple of any security breach of your Account. Apple shall not be responsible for any losses arising out of the unauthorized use of your Account.

In order to purchase and download iTunes Products from the iTunes Service, you must enter your Apple ID and password to authenticate your Account. Once you have authenticated your Account, you will not need to authenticate again for fifteen minutes. During this time, you will be able to purchase and download iTunes Products without re-entering your password. You can turn off the ability to make iTunes Product purchases by adjusting the settings on your computer or iOS Device. For more information, please see <http://support.apple.com/kb/HT1904> or <http://support.apple.com/kb/HT4213>.

You agree to provide accurate and complete information when you register with, and as you use, the iTunes Service ("iTunes Registration Data"), and you agree to update your iTunes Registration Data to keep it accurate and complete. You agree that Apple may store and use the iTunes Registration Data you provide for use in maintaining and billing fees to your Account.

AUTOMATIC DELIVERY AND DOWNLOADING PREVIOUS PURCHASES BETA

When you first acquire music iTunes Products and music video iTunes Products (collectively, "iTunes Eligible Content"), you may elect to automatically receive ("auto-download") copies of such iTunes Eligible Content on additional compatible iOS Devices and iTunes-authorized computers with compatible software by associating such iOS Devices and computers subject to the association rules below (each, an "Associated Device"). For each Associated Device, you may specify which type of iTunes Eligible Content, if any, may be auto-downloaded to it. On an Associated Device that is capable of receiving push notifications ("Push-Enabled"), including iOS Devices, the iTunes Eligible Content will auto-download to that Associated Device when it has an Internet connection; on an Associated Device that is not Push-Enabled, including those running on the Windows operating system, iTunes Eligible Content will automatically appear in the download queue and you may manually initiate the download within iTunes.

As an accommodation to you, subsequent to acquiring iTunes Eligible Content, you may download certain of such previously-purchased iTunes Eligible Content onto any Associated Device. Some iTunes Eligible Content that you previously purchased may not be available for subsequent download at any given time, and Apple shall have no liability to you in such event. As you may not be able to subsequently download certain previously-purchased iTunes Eligible Content, once you download an item of iTunes Eligible Content, it is your responsibility not to lose, destroy, or damage it, and you may want to back it up.

Association of Associated Devices is subject to the following terms:

(i) You may auto-download iTunes Eligible Content or download previously-purchased iTunes Eligible Content from an Account on up to 10 Associated Devices, provided no more than 5 are iTunes-authorized computers.

(ii) An Associated Device can be associated with only one Account at any given time.

(iii) You may switch an Associated Device to a different Account only once every 90 days.

(iv) You may download previously-purchased free content onto an unlimited number of devices while it is free on the iTunes Service, but on no more than 5 iTunes-authorized computers.

Some pieces of iTunes Eligible Content may be large, and significant data charges may result from delivery of such iTunes Eligible Content over a data connection.

PRIVACY

The iTunes Service is subject to Apple's Privacy Policy at <http://www.apple.com/privacy/>.

When you opt in to the Genius feature, Apple will, from time to time, automatically collect information that can be used to identify media in your iTunes library on this computer, such as your play history and playlists. This includes media purchased through iTunes and media obtained from other sources. This information will be stored anonymously and will not be associated with your name or Account. When you use the Genius feature, Apple will use this information and the contents of your iTunes library, as well as other information, to give personalized recommendations to you.

Apple may only use this information and combine it with aggregated information from the iTunes libraries of other users who also opt in to this feature, your iTunes Store purchase history data, aggregated purchase history data from other iTunes Store users, and other information obtained from third parties, to:

- Create personalized playlists for you from your iTunes library.
- Provide you with recommendations regarding media and other products and services that you may wish to purchase.
- Provide recommendations regarding products and services to other users.

At all times your information will be treated in accordance with Apple's Privacy Policy.

Once you opt in to the Genius feature in iTunes, you will be able to create Genius playlists on Genius-capable devices. To enable the Genius feature on a device, you must sync it with your iTunes library after you have opted in.

If you prefer that we do not collect and use information from your iTunes library in this manner, you should not enable the Genius feature. You can revoke your opt-in choice at any time by turning off the Genius feature from the Store menu in iTunes on your computer. After you opt out, iTunes will no longer send information about your iTunes library to Apple. If you have elected to share your library from multiple computers, you need to turn off the Genius feature from each computer. The Genius feature cannot be enabled or disabled from your device.

By opting in to the Genius feature, you consent to the use of your information as described above and as described in Apple's Privacy Policy.

CONTENT AVAILABILITY

Apple reserves the right to change content options (including eligibility for particular features) without notice.

USE OF PURCHASED OR RENTED CONTENT

You agree that the iTunes Service and certain iTunes Products include security technology that limits your use of iTunes Products and that, whether or not iTunes Products are limited by security technology, you shall use iTunes Products in compliance with the applicable usage rules established by Apple and its licensors ("Usage Rules"), and that any other use of the iTunes Products may constitute a copyright infringement. Any security technology is an inseparable part of the iTunes Products. Apple reserves the right to modify the Usage Rules at any time. You agree not to violate, circumvent, reverse-engineer, decompile, disassemble, or otherwise tamper with any of the security technology related to such Usage Rules for any reason—or to attempt or assist another person to do so. Usage Rules may be controlled and monitored by Apple for compliance purposes, and Apple reserves the right to enforce the Usage Rules without notice to you. You agree not to access the iTunes Service by any means other than through software that is provided by Apple for accessing the iTunes Service. You shall not access or attempt to access an Account that you are not authorized to access. You agree not to modify the software in any manner or form, or to use modified versions of the software, for any purposes including obtaining unauthorized access to the iTunes Service. Violations of system or network security may result in civil or criminal liability.

USAGE RULES

(i) You shall be authorized to use iTunes Products only for personal, noncommercial use.

(ii) You shall be authorized to use iTunes Products on five iTunes-authorized devices at any time, except for Content

Rentals (see below).

(iii) You shall be able to store iTunes Products from up to five different Accounts at a time on compatible devices, provided that each iPhone may sync ringtone iTunes Products with only a single iTunes-authorized device at a time, and syncing an iPhone with a different iTunes-authorized device will cause ringtone iTunes Products stored on that iPhone to be erased.

(iv) You shall be authorized to burn an audio playlist up to seven times.

(v) You shall not be entitled to burn video iTunes Products or ringtone iTunes Products.

(vi) iTunes Plus Products do not contain security technology that limits your usage of such products, and Usage Rules (ii) – (v) do not apply to iTunes Plus Products. You may copy, store, and burn iTunes Plus Products as reasonably necessary for personal, noncommercial use.

(vii) You shall be able to manually sync a movie from at least one iTunes-authorized device to devices that have manual sync mode, provided that the movie is associated with an Account on the primary iTunes-authorized device, where the primary iTunes-authorized device is the one that was first synced with the device or the one that you subsequently designate as primary using iTunes.

(viii) An HDCP connection is required to view content transmitted over HDMI.

(ix) Content Rentals

(a) Content rentals are viewable on only one device at a time. You must be connected to the iTunes Service when moving rentals, and you may do so only between your computer and other compatible devices. Content rented using your Apple TV, iPad, iPhone 4, or iPod touch (4th generation) may not be moved. If you move a rental to a compatible device and then use the iTunes Service to restore that device, or choose Settings > Reset > Erase all content and settings on that device, the rental will be permanently deleted.

(b) You have thirty (30) days after downloading a rental to begin viewing. Once you begin viewing, you have twenty-four (24) hours to finish viewing a movie, and forty-eight (48) hours to finish viewing a TV show. Stopping, pausing, or restarting a rental does not extend the available time for viewing.

Some iTunes Products, including but not limited to Content rentals, may be downloaded only once and cannot be replaced if lost for any reason. It is your responsibility not to lose, destroy, or damage iTunes Products once downloaded, and you may wish to back them up.

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PING

If you opt in to Ping, you can share information with people who have also opted in to Ping, such as your name, your image, and your interests. The name and image provided will also be associated with all reviews posted about an iTunes Product via your Account, including posts prior to opting in. People whom you have permitted to follow you will be able to see your activity on iTunes, such as events you are attending, music that you have indicated that you like, and purchases made with your Account. Your activity on another user's profile, such as comments you make about their activity, is subject to that user's privacy settings and can be viewed by all of that user's followers. You are solely responsible for the information that is associated with your Account that is made available on Ping. Apple may also use information provided, as well as information iTunes sends to Apple about the content you select in your iTunes library in order to provide you with Ping personal recommendations, such as suggesting other users you may want to follow, concerts and related information, or other iTunes Products you may want to purchase. By opting in to Ping, you consent to the use of such information in the manner described above. At all times your information will be treated in accordance with Apple's Privacy Policy. You should not opt in to Ping, or should opt out of Ping in your Account settings if you don't want others to view any information provided using your Account, including activity on iTunes. When you opt out, your information will be removed from view, and then deleted after seven days. If you opt out of Ping, or hide the Ping Sidebar, iTunes will no longer send information associated with the content you select in your iTunes library for Ping. You will be able to remove items from your Recent Activity if you do not want them to be visible to other users. Please take extra care when using these features.

COMPLETE MY ALBUM ("CMA")

In some circumstances, you will have no more than 180 days from the time you acquire your first CMA-eligible song or video from a particular CMA-eligible album to accept that CMA offer, and upgrading previous purchases to iTunes Plus does not affect any such time limits.

SEASON PASS, MULTI-PASS, ITUNES PASS

The full price of the Season Pass, Multi-Pass, or iTunes Pass is charged upon purchase. You must connect to the iTunes Service and download any remaining Pass content within 90 days after the final Pass content becomes available (or such other time period as may be specified on the purchase page), after which that content may no longer be available for download as part of the purchase. If automatic renewal is selected when you purchase a Multi-Pass, you will be charged the full price of each subsequent Multi-Pass cycle, unless and until you cancel automatic renewal prior to the beginning of the subsequent Multi-Pass cycle (in the Manage Passes section of your Account information). If a network or studio delivers fewer TV episodes than planned when you purchased a Season Pass, we will credit to your Account the retail value of the corresponding number of episodes.

HIGH-DEFINITION (HD) ITUNES PRODUCTS

HD iTunes Products are viewable only on HD capable devices; however, HD iTunes Products purchased (not rented) include a standard-definition version for use on non-HD devices.

SUBMISSIONS TO THE ITUNES SERVICE

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(ii) If you are a commercial enterprise or educational institution, you may download and sync an App Store Product for use by either (a) a single individual on one or more iOS Devices used by that individual that you own or control or (b) multiple individuals, on a single shared iOS Device you own or control. For example, a single employee may use an App Store Product on both the employee's iPhone and iPad, or multiple students may serially use an App Store Product on a single iPad located at a resource center or library. For the sake of clarity, each iOS Device used serially by multiple users requires a separate license.

(iii) You shall be able to store App Store Products from up to five different Accounts at a time on a compatible iOS Device.

(iv) You shall be able to manually sync App Store Products from at least one iTunes-authorized device to iOS Devices that have manual sync mode, provided that the App Store Product is associated with an Account on the primary iTunes-authorized device, where the primary iTunes-authorized device is the one that was first synced with the iOS Device or the one that you subsequently designate as primary using the iTunes application.

IMPORTANT SAFETY INFORMATION

To avoid muscle, joint, or eye strain during video game play, you should always take frequent breaks from playing, and take a longer rest if you experience any soreness, fatigue, or discomfort. A very small percentage of people may experience seizures or blackouts when exposed to flashing lights or patterns, including while playing video games or watching videos. Symptoms may include dizziness, nausea, involuntary movements, loss of awareness, altered vision, tingling, numbness, or other discomforts. Consult a doctor before playing video games if you have ever suffered these or similar symptoms, and stop playing immediately and see a doctor if they occur during game play. Parents should monitor their children's video game play for signs of symptoms.

IPOD GAMES

Updates to your existing compatible iPod device's firmware may render your purchased version of an iPod Game incompatible. Games purchased from the iTunes Store may not be compatible with future generations of the iPod.

MAC APP STORE AND APP STORE PRODUCT MAINTENANCE AND SUPPORT

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- (iv) The delivery of iBookstore Products does not transfer to you any promotional use rights in the iBookstore Products or any rights to burn the iBookstore Products to disc.
- (v) You shall be able to manually sync iBookstore Products from at least one iTunes-authorized device to devices that have manual sync mode, provided that the iBookstore Product is associated with an Account on the primary iTunes-authorized device, where the primary iTunes-authorized device is the one that was first synced with the device or the one that you subsequently designate as primary using iTunes.

Last Updated: June 6, 2011

D. PRIVACY POLICY

Your privacy is important to Apple. So we've developed a Privacy Policy that covers how we collect, use, disclose, transfer, and store your information. Please take a moment to familiarize yourself with our privacy practices and let us know if you have any questions.

Collection and Use of Personal Information

Personal information is data that can be used to uniquely identify or contact a single person.

You may be asked to provide your personal information anytime you are in contact with Apple or an Apple affiliated company. Apple and its affiliates may share this personal information with each other and use it consistent with this Privacy Policy. They may also combine it with other information to provide and improve our products, services, content, and advertising.

Here are some examples of the types of personal information Apple may collect and how we may use it.

What personal information we collect

- When you create an Apple ID, register your products, apply for commercial credit, purchase a product, download a software update, register for a class at an Apple Retail Store, or participate in an online survey, we may collect a variety of information, including your name, mailing address, phone number, email address, contact preferences, and credit card information.
- When you share your content with family and friends using Apple products, send gift certificates and products, or invite others to join you on Apple forums, Apple may collect the information you provide about those people such as name, mailing address, email address, and phone number.
- In the U.S., we may ask for your Social Security number (SSN) but only in limited circumstances such as when setting up a wireless account and activating your iPhone or when determining whether to extend commercial credit.

How we use your personal information

- The personal information we collect allows us to keep you posted on Apple's latest product announcements, software updates, and upcoming events. It also helps us to improve our services, content, and advertising. If you don't want to be on our mailing list, you can opt out anytime by updating your preferences.

■ We also use personal information to help us develop, deliver, and improve our products, services, content, and advertising.

■ From time to time, we may use your personal information to send important notices, such as communications about purchases and changes to our terms, conditions, and policies. Because this information is important to your interaction with Apple, you may not opt out of receiving these communications.

■ We may also use personal information for internal purposes such as auditing, data analysis, and research to improve Apple's products, services, and customer communications.

■ If you enter into a sweepstake, contest, or similar promotion we may use the information you provide to administer those programs.

Collection and Use of Non-Personal Information

We also collect non-personal information — data in a form that does not permit direct association with any specific individual. We may collect, use, transfer, and disclose non-personal information for any purpose. The following are some examples of non-personal information that we collect and how we may use it:

■ We may collect information such as occupation, language, zip code, area code, unique device identifier, location, and the time zone where an Apple product is used so that we can better understand customer behavior and improve our products, services, and advertising.

■ We also may collect information regarding customer activities on our website, MobileMe service, and iTunes Store and from our other products and services. This information is aggregated and used to help us provide more useful information to our customers and to understand which parts of our website, products, and services are of most interest. Aggregated data is considered non-personal information for the purposes of this Privacy Policy.

If we do combine non-personal information with personal information the combined information will be treated as personal information for as long as it remains combined.

Cookies and Other Technologies

Apple's website, online services, interactive applications, email messages, and advertisements may use "cookies" and other technologies such as pixel tags and web beacons. These technologies help us better understand user behavior, tell us which parts of our website people have visited, and facilitate and measure the effectiveness of advertisements and web searches. We treat information collected by cookies and other technologies as non-personal information. However, to the extent that Internet Protocol (IP) addresses or similar identifiers are considered personal information by local law, we also treat these identifiers as personal information. Similarly, to the extent that non-personal information is combined with personal information, we treat the combined information as personal information for the purposes of this Privacy Policy.

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As is true of most websites, we gather some information automatically and store it in log files. This information includes Internet Protocol (IP) addresses, browser type and language, Internet service provider (ISP), referring and exit pages, operating system, date/time stamp, and clickstream data.

We use this information to understand and analyze trends, to administer the site, to learn about user behavior on the site, and to gather demographic information about our user base as a whole. Apple may use this information in our marketing and advertising services.

In some of our email messages, we use a "click-through URL" linked to content on the Apple website. When customers click one of these URLs, they pass through a separate web server before arriving at the destination page on our website. We track this click-through data to help us determine interest in particular topics and measure the effectiveness of our customer communications. If you prefer not to be tracked in this way, you should not click text or graphic links in the email messages.

Pixel tags enable us to send email messages in a format customers can read, and they tell us whether mail has been opened. We may use this information to reduce or eliminate messages sent to customers.

Disclosure to Third Parties

At times Apple may make certain personal information available to strategic partners that work with Apple to provide products and services, or that help Apple market to customers. For example, when you purchase and activate your iPhone, you authorize Apple and its carrier to exchange the information you provide during the activation process to carry out service. If you are approved for service, your account will be governed by Apple and its carrier's respective privacy policies. Personal information will only be shared by Apple to provide or improve our products, services and advertising; it will not be shared with third parties for their marketing purposes.

Service Providers

Apple shares personal information with companies who provide services such as information processing, extending credit, fulfilling customer orders, delivering products to you, managing and enhancing customer data, providing customer service, assessing your interest in our products and services, and conducting customer research or satisfaction surveys. These companies are obligated to protect your information and may be located wherever Apple operates.

Others

It may be necessary – by law, legal process, litigation, and/or requests from public and governmental authorities within or outside your country of residence – for Apple to disclose your personal information. We may also disclose information about you if we determine that for purposes of national security, law enforcement, or other issues of public importance, disclosure is necessary or appropriate.

We may also disclose information about you if we determine that disclosure is reasonably necessary to enforce our terms and conditions or protect our operations or users. Additionally, in the event of a reorganization, merger, or sale we may transfer any and all personal information we collect to the relevant third party.

Protection of Personal Information

Apple takes precautions — including administrative, technical, and physical measures — to safeguard your personal information against loss, theft, and misuse, as well as against unauthorized access, disclosure, alteration, and destruction.

Apple online services such as the Apple Online Store and iTunes Store use Secure Sockets Layer (SSL) encryption on all web pages where personal information is collected. To make purchases from these services, you must use an SSL-enabled browser such as Safari, Firefox, or Internet Explorer. Doing so protects the confidentiality of your personal information while it's transmitted over the Internet.

When you use some Apple products, services, or applications or post on an Apple forum, chat room, or social networking service, the personal information you share is visible to other users and can be read, collected, or used by them. You are responsible for the personal information you choose to submit in these instances. For example, if you list your name and email address in a forum posting, that information is public. Please take care when using these features.

Integrity and Retention of Personal Information

Apple makes it easy for you to keep your personal information accurate, complete, and up to date. We will retain your personal information for the period necessary to fulfill the purposes outlined in this Privacy Policy unless a longer retention period is required or permitted by law.

Access to Personal Information

You can help ensure that your contact information and preferences are accurate, complete, and up to date by logging in to your account at <https://appleid.apple.com/>. For other personal information, we make good faith efforts to provide you with access so you can request that we correct the data if it is inaccurate or delete the data if Apple is not required to retain it by law or for legitimate business purposes. We may decline to process requests that are unreasonably repetitive, require disproportionate technical effort, jeopardize the privacy of others, are extremely impractical, or for which access is not otherwise required by local law. Access, correction, or deletion requests can be made to the regional Privacy email addresses.

Children

We do not knowingly collect personal information from children under 13. If we learn that we have collected the personal information of a child under 13 we will take steps to delete the information as soon as possible.

Location-Based Services

To provide location-based services on Apple products, Apple and our partners and licensees may collect, use, and share precise location data, including the real-time geographic location of your Apple computer or device. This location data is collected anonymously in a form that does not personally identify you and is used by Apple and our partners and licensees to provide and improve location-based products and services. For example, we may share geographic location with application providers when you opt in to their location services.

Some location-based services offered by Apple, such as the MobileMe "Find My iPhone" feature, require your personal information for the feature to work.

Third-Party Sites and Services

Apple websites, products, applications, and services may contain links to third-party websites, products, and services. Our products and services may also use or offer products or services from third parties – for example, a third-party iPhone app. Information collected by third parties, which may include such things as location data or contact details, is governed by their privacy practices. We encourage you to learn about the privacy practices of those third parties.

International Users

Information you provide may be transferred or accessed by entities around the world as described in this Privacy Policy. Apple abides by the "safe harbor" framework set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information collected by organizations in the European Economic Area and Switzerland. Learn more about the U.S. Department of Commerce Safe Harbor Program.

Please note that personal information regarding individuals who reside in a member state of the European Economic Area (EEA) is jointly controlled by Apple Sales International in Cork, Ireland, and Apple UK Limited in Uxbridge, United Kingdom. Personal information collected in the EEA when using iTunes is controlled by iTunes SARL in Luxembourg.

Our Companywide Commitment to Your Privacy

To make sure your personal information is secure, we communicate our privacy and security guidelines to Apple employees and strictly enforce privacy safeguards within the company.

Privacy Questions

If you have questions or concerns about Apple's Privacy Policy or data processing, please contact us at the appropriate regional email addresses for your local Apple Data Controller listed below.

Country or Region – Contact Information

United States <http://www.apple.com/privacy/contact/>
Canada <http://www.apple.com/privacy/contact/>
Latin America <http://www.apple.com/privacy/contact/>
Europe <http://www.apple.com/privacy/contact/>
Japan <http://www.apple.com/privacy/contact/>
Australia <http://www.apple.com/privacy/contact/>
Asia/Pacific <http://www.apple.com/privacy/contact/>

Apple may update its Privacy Policy from time to time. When we change the policy in a material way, a notice will be

posted on our website along with the updated Privacy Policy.

Apple Inc., 1 Infinite Loop, Cupertino, California, USA 95014

Last updated 21 June 2010



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Exhibit B

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Thesaurus

Quotes

Encyclopedia

Translator

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[How we use the information we collect](#)

[Information we share with third parties](#)

[Security precautions we take to protect your information](#)

[Children's Guidelines](#)

[Law Enforcement/Legal Requirements](#)

[Visiting the Sites from outside of the United States](#)

[How to contact us with questions about privacy](#)

Information we collect when you visit the Sites

Information we automatically collect: Each time you visit one of the Sites, we collect the limited information that your browser makes available whenever you visit any website, including: (a) your Internet Protocol (IP) address; (b) the address of the last URL you visited prior to clicking through to the Site; (c) your browser and platform type (e.g., a Netscape browser on a Macintosh platform); (d) your browser language; and (e) the data in any undeleted cookies that your browser previously accepted from us, which may include the word look-ups you previously submitted, Site pages you previously visited and your interaction with the advertising on the Sites (see "[Dictionary.com cookies](#)" below).

Additionally, when you enter a search query or word look-up using the Sites or Services, we will receive the query text and process it, together with the above data, to return a results page to you. We disassociate your query text data from your IP address and your unique cookie ID (see "[Dictionary.com cookies](#)" below) after a period of 18 months, except in limited circumstances, such as requests to retain the information by law enforcement.

Registration Information: If you decide to purchase Dictionary.com Premium Services or subscribe to other additional services such as receiving the Word of the Day messages, we may ask you to submit certain identifying information, such as your name, address, e-mail address, and telephone number and, for paid services, financial information such as your payment method

Contact Us
 Dictionary.com, LLC. Copyright © Follow us: Twitter Facebook
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Use of cookies and other technologies

Dictionary.com cookies: When you visit the Sites, we may assign your computer one or more cookies to facilitate access to our site and to personalize your online experience. A cookie is a small text file that is stored on a user's computer for record keeping purposes. Cookies can be either session cookies or persistent cookies. A session cookie expires when you close your browser. A persistent cookie remains on your hard drive for an extended period of time. Our cookies expire after two years, and all information from expired cookies is automatically deleted from our servers. You may disable or remove our cookies at any time (see "[How to decline or delete cookies](#)" below).

We use cookies for various purposes:

We count, track, and aggregate our visitors' activities in our analysis of general traffic flows at the Sites (e.g., tracking where users come from, what pages they select within the Sites, how they interact with search results, etc.) to facilitate evaluation, improvement, and development of the Sites and Services and also for internal reporting purposes and optimization of advertising revenue.

We collect information about your online activity on the Sites, such as the web pages you visit, links you click, searches and word look-ups you conduct and how you interact with ads on the Sites, in order to customize your experience on the Sites including the advertisements that we display to you;

We use a cookie to determine whether or not you are signed in as a Premium Services subscriber

Our cookies contain an anonymous unique identifier (usually in the form of a serial number). If you are a registered user for Premium Services, when you sign in to your account on our Sites, we will record your user or member ID and the name on your user or member account in the cookie file on your computer. We also may record your password in this cookie file, if you indicated that you would like your password saved for automatic sign-in. For security purposes, we will encrypt any usernames, passwords, and other user or member account-related data that we store in such cookies.

Other technologies used by Dictionary.com: We may use standard Internet technology, such as pixel tags, web beacons and other similar technologies to track your use of the Site. Web beacons (also known as clear gifs, pixel tags or web bugs) are tiny graphics with a unique identifier, similar in function to cookies, and are used to track the online movements of web users or to access cookies. Unlike cookies which are stored on the user's computer hard drive, web beacons are embedded invisibly on the web pages (or in email). We also may include web beacons in e-mail messages or newsletters to determine whether messages have been opened and acted upon. We also may receive an anonymous identification number if you come to our site from an online advertisement displayed on a third-party website. The information we obtain in this manner enables us to customize the services we offer, to deliver targeted advertisements and to measure the overall effectiveness of our online advertising or other Services.

Third-party advertising company cookies: We use third-party companies to serve advertisements when you visit the Sites. In the course of serving advertisements on the Sites, these companies may place or recognize a unique cookie on your computer or use other technologies such as pixel tags in connection with the Sites. We allow certain third-party advertising networks who sell ads on the Sites to use cookies, pixel tags and similar technology to collect information about your interactions with the Sites, such as the queries or word look-ups you submit, the pages you view, the advertisements you view and your interactions with such advertisements. The third-party advertising networks may then use such information about you to draw inferences about your interests and display advertisements matched to those interests. Through cookies placed on your computer, third-party advertising networks may recognize you when you visit other sites and properties where they also place advertisements. You may receive customized advertisements on the Sites and on other sites with advertising managed by the same third-party advertising networks.

Our Privacy Policy does not cover any use of information that a third-party ad-serving company might collect from you. These companies have their own recordkeeping and data-retention policies. Most of our advertising service providers are members of the Network Advertising Initiative. If you would like to consider your options for limiting use of such information by these advertising companies, or would like to learn more about their practices, please consult the Network Advertising Initiative website at <http://www.networkadvertising.org/>.

If you decide to purchase the Premium Services from us, you will receive the Services ad-free, and starting on the day you are registered as a Premium Service user, no additional third-party advertising company cookies will be placed on your computer.

Cookies from other service providers: We also use third-party vendors to help us better understand our user demographics. These vendors may place or recognize a unique cookie on your computer or use other technologies such as pixel tags in connection with the Sites to provide their services to us. Some of the games available on the Site are also provided by third parties and such third parties may place a flash cookie on your computer to enable you to play the game.

How to decline or delete cookies: Most browsers automatically accept cookies, but you can usually modify your browser setting to decline cookies. If you choose to decline cookies, please note that you may not be able to sign in or use some of the interactive features offered on the Sites. The "Help" portion of the toolbar on most browsers will tell you how to prevent your browser from accepting new cookies, how to have the browser notify you when you receive a new

users to delete flash cookies, as well as set permissions for sites to drop and store cookies on the user's computer. The tool can be found at http://www.macromedia.com/support/documentation/en/flashplayer/help/settings_manager06.html and http://www.macromedia.com/support/documentation/en/flashplayer/help/settings_manager07.html

How we use the information we collect

In general: We may use information that we collect about you, including anonymous and personally identifiable information, to:

- deliver the Services on the Sites and manage our business;
- manage your Premium Services account and provide you with customer support; perform research and analysis about your use of, or interest in, our products, services, or content, or products, services or content offered by others;
- communicate with you by e-mail, postal mail, telephone and/or mobile devices at your request, or inform you about products or services that may be of interest to you either from us, our sister IAC companies or other third parties;
- display content and advertising tailored to your interests; and develop and display advertising on other sites;
- verify your eligibility and deliver prizes in connection with contests and sweepstakes; and enforce our terms and conditions;

IP Address: We use your IP address to help diagnose problems with our server, and to administer our Sites. Your IP address may also be used to gather broad demographic information.

Email address: We do not use your email address to send you unsolicited email. If you are receiving email from us, it is because at some point you, or someone with access to your email account, requested it. We may include advertisements in the emails that you receive from us (such as the Word of the Day emails). If you are receiving email from us in response to an inquiry you made, we will use your email address for no purpose other than to respond to your inquiry.

If you are receiving email from us and wish to stop, simply follow the instructions at the bottom of the email message in question or use the unsubscribe form on these pages:

[Dictionary.com Word of the Day](#)
[Reference.com On This Day](#)

Cell phone number: We use your cell phone number to send you SMS messages as requested by you. We may also share your cell phone number with trusted third parties for them to send you advertisements and promotional offers that we think may be of interest to you. In order to stop receiving SMS messages from us, you may text STOP to 44636.

Information we share with third parties

Service Providers: We may share your information with our authorized service providers that perform certain services on our behalf. These services include processing credit card payments, providing customer service and marketing assistance, performing business and sales analysis, supporting our website functionality, and supporting contests, sweepstakes, surveys and other features offered through the Sites. These service providers may have access to personal information needed to perform their functions but are not permitted to share this information with others or use it for any other purposes. These third-party companies have their own policies as to record keeping and data retention.

Advertising Service Providers: Some elements on the Sites, such as the sponsored links advertising on our pages, are supplied to us by third parties under contract. We may supply some of the information we collect from you to those third parties so that they can provide those elements for display on the Sites. We may share the following information with such third parties: (a) your Internet Protocol (IP) address; (b) the address of the last URL you visited prior to clicking through to the Site; (c) your browser and platform type (e.g., a Netscape browser on a Macintosh platform); (d) your browser language; (e) the data in any undeleted cookies that your browser previously accepted from us; and (f) the search queries or word look-ups you submit. For example, when you submit a query, we transmit it (and some of the related information described above) to our paid listing providers in order to obtain relevant advertising to display in response to your query or look-up.

Except as indicated above, Dictionary.com shares your personally identifiable information only in aggregate form, so that only non-personally identifiable information is shared with our affiliates, advertisers and business partners. We do not share any information that identifies specific visitors.

Security precautions to protect your information

We have security measures in place that are designed to safeguard and help prevent unauthorized access to information we collect through the Sites and Services. Dictionary.com utilizes both industry and proprietary standards to preserve the confidentiality of information. We seek to limit access to our users' information to employees who we believe reasonably need access to that information to provide products or services to you or in order to perform their jobs. These employees have been informed of the need to maintain the security and confidentiality of such information. Unfortunately, no security system can be 100% secure; accordingly, we cannot fully guarantee the security of the information that we collect online.

participate in the activity. Without prior parental consent, online information will be used only to respond directly to the child's request and will not be used for other purposes;

distribute to third parties any personally identifiable information without prior parental consent;

enable the public posting or other distribution of personally identifiable contact information without prior parental consent;

enable the public posting or other distribution of personally identifiable contact information without prior parental consent

entice users, by the prospect of a special game, prize or other activity, to divulge more information than is needed to participate in the activity.

Law Enforcement/Legal Requirements

We may disclose your personally identifiable information as well as your IP address and other information in order to comply with court orders, subpoenas, or regulatory obligations, or when otherwise required to do so by law. We also may disclose such information in compliance with a law enforcement or other governmental request, or where we believe disclosure is necessary to investigate, prevent, or take action regarding illegal activities, suspected fraud, situations involving potential threats to the physical safety of any person, or violations of our [Terms of Use](#).

Visiting the Sites from outside of the United States

If you are visiting the Sites from outside of the United States, your information will be transferred to, stored, and processed in the United States, where our servers are located and our central database is operated. The data-protection and other laws in the United States and other countries might not be as comprehensive as those in your own country. Please be assured, however, that we seek to take reasonable steps to protect your privacy. By using the Sites and Services, you consent to the transfer of your information to our facilities and those third parties with whom we may share it as described in this Privacy Policy.

How to contact us with questions about privacy

If you have any questions about this Privacy Policy, the practices of the Sites, or your dealings with the Sites, you can contact:

Dictionary.com, LLC
Attn: Privacy Officer
555 12th Street, Suite 500
Oakland, CA 94607
[E-mail](#)

Exhibit C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: IPHONE) C-10-05878 LHK
APPLICATION LITIGATION)
) SAN JOSE, CALIFORNIA
)
) SEPTEMBER 8, 2011
)
) PAGES 1-55

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

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FOR BURWICK IN THE GREENBURG TRAURIG
RELATED CASE: BY: ALAN E. MANSFIELD
METLIFE BUILDING
200 PARK AVENUE
NEW YORK, NEW YORK 10166

1 SAN JOSE, CALIFORNIA SEPTEMBER 8, 2011

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE
4 FOLLOWING PROCEEDINGS WERE HELD:)

5 THE CLERK: CALLING THE MATTER OF
6 LALO V. APPLE, INCORPORATED, AND ALL OF THE RELATED
7 AND MULTIDISTRICT CASES.

8 COUNSEL WOULD YOU STATE YOUR APPEARANCES,
9 PLEASE.

10 MS. BERINGER: GOOD AFTERNOON, YOUR
11 HONOR. ASHLIE BERINGER FROM GIBSON, DUNN.

12 MR. PAGE: GOOD AFTERNOON, YOUR HONOR.
13 MICHAEL PAGE OF DURIE TANGRIE FOR ADMOB.

14 MR. BROWN: MATTHEW BROWN FOR DEFENDANTS
15 ADMARVAL AND MILLENNIAL MEDIA.

16 MR. MCCABE: JIM MCCABE FOR DEFENDANT
17 APPLE INC., AND WITH ME IS BRYAN WILSON.

18 THE COURT: OKAY.

19 MR. OTT: CARTER OTT FOR DEFENDANT
20 MOBCLIX, INC.

21 MS. DAVIDSON: GOOD AFTERNOON, YOUR
22 HONOR. RACHEL DAVIDSON FOR TRAFFICMARKETPLACE.

23 MR. KAMBER: GOOD AFTERNOON, YOUR HONOR.
24 SCOTT KAMBER AND DEBORAH KRAVITZ, KAMBER LAW,
25 PLAINTIFFS.

1 PRACTICE.

2 THE COURT: ALL RIGHT. LET ME ASK YOU IF
3 YOU CAN ELABORATE A LITTLE BIT ON YOUR THEORIES OF
4 HARM, AND SPECIFICALLY ABOUT -- I'M NOT CLEAR ON
5 WHAT THE VALUE FOR VALUE EXCHANGES MEAN, WHAT'S THE
6 DEPRIVED OPPORTUNITY CAUSE, WHAT THAT MEANS.

7 CAN YOU --

8 MR. KAMBER: YES, YOUR HONOR.

9 THE COURT: GO AHEAD.

10 MR. KAMBER: THE MOST INTUITIVE BASIS FOR
11 THIS, DIRECTING YOU TO LOOKING AT -- FROM THE VALUE
12 TO VALUE EXCHANGE -- I MEAN, WE SUMMARIZED IT AS
13 THE VALUE FOR VALUE EXCHANGES; THE OPPORTUNITY
14 COSTS, THE UNDISCLOSED OPPORTUNITY COSTS; THE
15 DEVALUATION OF PERSONAL INFORMATION; THE LOSS OF
16 ECONOMIC VALUE OF THE PERSONAL INFORMATION AND
17 ASSETS; THE PREMIUM THAT'S PAID OR -- ON THE COST
18 OF THE IDEVICE, BANDWIDTH UTILIZATION -- AND BY
19 "BANDWIDTH UTILIZATION," MEANING IT SLOWS YOU DOWN
20 AND, YOU KNOW, BASICALLY THAT BY THIS OTHER
21 INFORMATION THAT WAS UNDISCLOSED AND THAT YOU
22 DIDN'T EXPECT TO BE SENDING THROUGH THE DEVICE,
23 THAT IT SLOWS IT DOWN AND COSTS MONEY BECAUSE, FOR
24 MANY CLASS MEMBERS, THEY PAY FOR DATA FROM AT&T OR
25 VERIZON, FOR DATA USAGE; POTENTIAL DAMAGE TO THE

1 IDEVICE IN THE SENSE THAT IT CONSUMES RESOURCES;
2 LIMITED BATTERY AND MEMORY CAPACITY; PROCESSING
3 POWER AND BANDWIDTH BECAUSE MOVING DATA HAS A COST,
4 HAS A COST TO THE DEVICE ITSELF; THE IMPAIRMENT OF
5 THE DEVICE; THE VALUE; THE INSTALLATION AND
6 OPERATION OF THE DEVICE OF THE DEFENDANT'S
7 PROGRAM --

8 THE COURT: LET ME ASK YOU A QUESTION.

9 MR. KAMBER: SURE.

10 THE COURT: I'M SORRY TO INTERRUPT YOU.

11 MR. KAMBER: NO.

12 THE COURT: IT SEEMS LIKE YOUR COMPLAINT
13 SAYS THESE ARE THE THINGS THAT CAN HAPPEN. IT
14 DOESN'T SAY "INDIVIDUAL X HAD PERSONAL INFORMATION
15 A, B, C TAKEN BY DEFENDANT 0 AND THE FOLLOWING
16 RESULTED." THIS ALL SEEMS SORT OF, YOU KNOW, THESE
17 ARE HYPOTHETICAL.

18 MR. KAMBER: WELL, OH, THEY'RE -- THEY'RE
19 ACTUALLY -- THEY ARE ACTUAL HARMS.

20 THE COURT: UM-HUM.

21 MR. KAMBER: I THINK IN THE COMPLAINT
22 ITSELF -- YOU KNOW, LOOKING AT THE HEPTING VERSUS
23 AT&T CASE --

24 THE COURT: YEAH.

25 MR. KAMBER: -- THIS IS SOMETHING THAT

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

/s/

LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

Exhibit D

JS-6
O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV10-05306 ODW (AGRx)	Date	9/19/2011
Title	<i>Thomas Robins v. Spokeo, Inc.</i>		

Present:

The Honorable Otis D. Wright II, United States District Judge

Sheila English

Not Present

n/a

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

Proceedings (In Chambers): Order Correcting Prior Ruling [52] and Finding Moot Motion for Certification. [57]

Upon further review, the Court finds it necessary to strike the standing discussion from its May 11, 2011 Order. (Docket No. 52.) In its stead, the Court reinstates the January 27, 2011 Order, which found that Plaintiff fails to establish standing. (*See* Docket No. 35.) Among other things, the alleged harm to Plaintiff's employment prospects is speculative, attenuated and implausible. Mere violation of the Fair Credit Reporting Act does not confer Article III standing, moreover, where no injury in fact is properly pled. Otherwise, federal courts will be inundated by web surfers' endless complaints. Plaintiff also fails to allege facts sufficient to trace his alleged harm to Spokeo's alleged violations. In short, Plaintiff fails to establish his standing before this Court. This action is therefore **DISMISSED**. Spokeo's motion for certification of appeal is **MOOT**.

SO ORDERED.

Initials of Preparer

---- : 00

SE